

## REMARKS

Presently claims 1-12 are pending in this application. Claim has been amended. Claims 6 and 9 have been cancelled. Applicant will now respectfully address the Examiner's objections and rejections.

### Objections to the Drawings

The Examiner objects to the Drawings because Figure 11 includes reference character 56, which was not mentioned in the Description. In response, Applicant respectfully submits Replacement Sheet 1, which includes a new Figure 11 that does not include reference character 56.

### Objections to the Specification

The Examiner objects to the Specification because the third full paragraph of page 6 makes reference to "leaf springs 35." In response, Applicant has amended this paragraph to appropriately reference the leaf springs as "leaf springs 34."

### Rejections under 35 U.S.C. 102(b)

Claims 1-4, 6, and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5,624,376 to Ball ("Ball" hereinafter). Applicant respectfully traverses.

Applicant's amended claim 1 recites *inter alia*,

"the sound receiver being rigidly fixed to malleus or incus, whereby incus and stapes are disconnected so that the incus can move independently from the stapes."

The Examiner cites Figures 8 and 9 and column 10 line 58 through column 11 line 5 of Ball as teaching the subject matter of the above referenced limitation of Applicant's amended claim 1. However, Applicant respectfully submits that Figures 8 and 9 and

column 10 line 58 through column 11 line 5 of Ball do not teach a receiver rigidly attached to malleus or incus in a manner that allows the incus and stapes to be disconnected so that the incus can move independently of the stapes. In fact, this portion of Ball does not teach a sound emitter at all. Instead, this portion of Ball teaches a transducer 100 that includes a coil 206 that emits sound via vibration (see column 11 line 42 through column 12 line 1). However, even if the transducer 100 were a sound receiver, the transducer 100 is taught in Ball to be fixed to a pair of members 38, 40 or 38c, 40c of a complete or partial prosthesis, NOT to the malleus or incus, as is recited in Applicant's amended claim 1. Still further, being that this portion of Ball teaches a complete or partial prosthesis, the original ossicular chain (and thus, the incus and stapes) is no longer present. As such, not only does this portion of Ball teach removal of the incus and stapes, but the members 38, 40 or 38c, 40c that are prosthetic replacements for the incus and stapes ARE connected via the transducer in a manner that would NOT allow the replacement incus to move independently of the replacement stapes. Therefore, even the prosthetic replacements of the incus to and stapes are not taught as recited in Applicant's amended claim 1.

Applicant notes that though it may be arguable that other portions of Ball teach a sound receiver fixed to a malleus or incus as recited in Applicant's amended claim 1, there is certainly no teaching anywhere in Ball of a receiver fixed to a malleus or incus in a manner that allows the incus and stapes to be *disconnected so that the incus can move independently of the stapes*. It should be noted that interruption of the ossicular chain (i.e. disconnect of the incus and stapes) as claimed in Applicant's amended claim 1 avoids a motional feedback of the vibrations produced by an emitting transducer and received by a receiving transducer, thus greatly improving the quality of the (fully implantable) hearing aid.

In the Office Action the Examiner submits that the device 14 of Rozek inherently creates a pressure differential between air under a cover and air passing over or around a cover. The Examiner also submits that this inherently created pressure differential causes the air under the cover to exhaust to an exterior of the cover. As Rozek certainly does not explicitly teach an exhausting of air from under the cover to an exterior of the cover, Applicant respectfully assumes that the Examiner believes this exhausting to also be inherently created by the device 14 of Rozek.

Applicant respectfully submits that an exhausting of air from under a cover to the exterior of the cover is not inherent to the device of Rozek. Referring to MPEP 2112 IV and *Ex parte Levy*, 17 USPQ2d 1461, Applicant respectfully points out that “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily (emphasis included) flows from the teachings of the applied prior art.” With reference to Rozek, the Examiner is using the illustrated and described structure of the *ventilator* 14 to determine that the *ventilator* 14 necessarily includes an aerodynamic structure that will *exhaust* air from under the cover. However, neither Rozek nor the Examiner gives any basis in fact or technical reasoning to support this determination. On the contrary, Rozek teaches an “intake of air through the ventilator 14,” (column 2, lines 35-36) as opposed to an exhausting of air. As a ventilator would be described by one of ordinary skill in the art to be a device that allows an intake of air into an area (such as an area under a cover), technical reasoning as applied to ventilators as a whole would also dictate that the ventilator 14 of Rozek would function in a manner opposite to a device configured to exhaust air. Thus, the ventilator 14 of Rozek is taught to, and would be expected to, *vent air in as opposed to exhaust air out*. Therefore, Applicant respectfully asserts that an exhausting of air is not only NOT inherent to the ventilator 14 of Rozek, but is also the opposite of what the Rozek ventilator 14 is taught to do.

Accordingly, Applicant respectfully submits that Rozek does not teach every element of Applicant’s claim 1. Furthermore, like claim 1, Applicant’s claim 24 recites and “exhaust aperture,” and Applicant’s claim 29 recites a low pressure that “draws (i.e.

exhausts) higher pressure fluid from between the first and second objects.” As such, for at least the reasons set forth above, Rozek does not anticipate Applicant’s claims 1, 24, and 29, and claims 2-11 and 25-26 that depend respectively therefrom.

Rejections under 35 U.S.C. 103(a)

Claim 5 is rejected under 35 U.S.C. 103(a) as being obvious over Ball in view of United States Publication No. 2002/0138115 to Baumann (“Baumann” hereinafter). Applicant respectfully traverses.

With reference to the 102 Remarks above, Ball does not teach every element Applicant’s claim 1. As Baumann does not remedy the deficiencies of Ball, and claim 5 depends from claim 1, Applicant respectfully submits that claim 5 is not obvious over the combination of Ball and Baumann.

Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being obvious over Ball in view of United States Patent No. 5,531,787 to Lesinski et al. (“Lesinski” hereinafter), in further view of United States Patent No. 6,398,717 to Leysieffer et al. (“Leysieffer” hereinafter). Applicant respectfully traverses.

With reference to the 102 Remarks above, Ball does not teach every element Applicant’s claim 1. As Lesinski and Leysieffer do not remedy the deficiencies of Ball, and claims 7 and 12 depend from claim 1, Applicant respectfully submits that claims 7 and 12 are not obvious over the combination of Ball, Lesinski, and Leysieffer.

The prior art rejections herein overcome. Entry of the present Response with Amendment and prompt issuance of a Notice of Allowance are respectfully requested.

Applicant hereby petitions for a two month extension of time, or any other extension of time required for consideration of this Response.

Please charge any fees due with respect to this Response, or otherwise regarding the application, to Deposit Account 06-1130 maintained by Applicant’s attorneys.

The Office is invited to contact Applicants' attorneys at the below-listed telephone number regarding this Response or otherwise concerning the present application.

Respectfully submitted,

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